HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8586 OF 2005.

Maharashtra Rajya Sahakari
Krushi & Gramin Vikas Bank
Ltd., Mumbai. ..Petitioner.

Versus.

The Chairman, Top Vadgaon,
Tasgaon, Minache Sah. Pani
Puravatha Mandali Mydt. ..Respondent.

Shri. Amit B. Borkar for the Petitioners.

Shri. V. B. Rajure for the respondents.

CORAM: S.B.MHASE, J.

DATE : MARCH 27, 2006.

P.C.

1. Heard learned counsel appearing on behalf of both sides. The restoration application filed by the present petitioner to restore appeal No. 208 of 1996 is rejected by the Co-operative Appellate Court and the said order is under challenge before this Court.

2. Appeal No. 208 of 1996 was dismissed on 6.10.2003. Application dated 4.11.2003 for certified copy was brought on record, which according to the petitioner, was sent by courier and it was not presented to the Court through their respresentative Advocates.

The courier receipt in respect of the receipt of the said application to the Court was not brought on record. The certified copy produced along with the application for restoration shows that the application for certified copy was made on 28.7.2004 and thereafter the restoration application was filed. There was a delay of eight months and that was tried to be explained on the basis of such material. Though we are expected to be liberal in such matters but there should be sufficient ground on record to condone the delay. The First Appellate Court has found that there are cogent reasons and sufficient cause brought on record to condone the delay. On the contrary, the facts brought on record show that the applicant - petitioners were negligent in prosecuting the appeal and also in filing the restoration application.

3. Learned counsel for the petitioner tried to rely upon **(2001) 6 SCC 176, M.K.Prasad v/s. P. Arumugam,** and submitted that failing to adopt the extra vigilance should not be made a ground for ousting a party from litigation, and in particular when the inconvenience caused to the other party can be compensated by awarding appropriate and exemplary costs. This Court has gone through the facts of that case and it is found that in that case 54 days' delay was caused in preferring an application to set aside the decree on a ground that the

advocate for the said party had retired after framing of issues owing to the death of his son and had not informed the party that he had retired from the said proceeding. Thus the matter was decided ex-parte; the party was not at fault and/or negligent. Therefore on payment of the exemplary cost the decree was set aside. However, the facts in the present case are very different. In the present case the Advocate was very much on record, he had not retired from the matter or had not withdrawn his vakalatnama. The matter was thus dismissed for non prosecution. That too, the matter filed in the year 1996 was dismissed on 6.10.2003, i.e., after a period of six years.

4. It is further to be noted that the dispute which was filed by the respondent was for the settlement of the accounts and the award in terms of the settlement after settling the accounts was passed by the Co-operative Court and that decreetal amount has been completely deposited by the respondent - original disputant. The said decree is under challenge on a ground that the Manager who had settled the accounts on behalf of the present petitioner was not the authorised person. However, it is admitted that he was authorised to appear in the said dispute on behalf of the petitioner - society. Therefore, in my opinion it is not the matter

to be allowed by granting the exemplary costs as that has been observed in the above referred case. On facts the reported judgment on which the learned counsel relies heavily stands distinguished. This Court finds no fault with the reasoning given and observations made by the First Appellate Court while rejecting the restoration application. Therefore, no interference is called for.

Petition is hereby rejected.

(S.B.MHASE, J.)